Testimony of Paul Virtue
General Counsel
Immigration and Naturalization Service
Department of Justice

A Hearing On
Past Designation of Temporary Protected Status
and Fraud in Prior Amnesty Programs

Before
The House Immigration and Claims Subcommittee
House Judiciary Committee

Thursday, March 4, 1999
2237 Rayburn House Office Building
10:00 AM

Mr. Chairman, Congresswoman Jackson Lee, and Members of the Subcommittee, I am pleased to have the opportunity to talk to you today about the Temporary Protected Status (TPS) program, the legalization program, and the efforts of the Immigration and Naturalization Service (INS) to combat fraud under these programs while ensuring that benefits are extended to eligible applicants. I will also address what INS will do to detect fraudulent applications for permanent residence under the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA).

Before I provide a detailed report on the subjects of today s hearing, let me summarize the major points. First, I want to assure you that INS shares your concerns about fraudulent claims, not just under the programs that are the subject of this hearing, but in all of our immigration benefit programs.

In recent years, INS, with the strong support of Congress, has strengthened both its capacity to prevent fraud and its ability to pursue successful legal action against those who engage in fraudulent practices. While our fraud prevention efforts have been enhanced in recent years, there is room for further improvement, and we look forward to working with you during the 106th Congress to ensure that the valuable benefits we offer are provided only to those immigrants who are eligible. Preventing and punishing fraud are critical for maintaining the integrity of our nation s immigration laws.

While the TPS program has not experienced a large amount of fraud, INS has nevertheless taken steps to ensure the integrity of the TPS process for the large number of people affected by the decision to designate Nicaragua and Honduras for TPS. This decision, made in response to the widespread devastation caused by Hurricane Mitch could affect more than 100,000 Nicaraguans and Hondurans who resided in the United

States as of December 30, 1998.

TPS was created by the Immigration Act of 1990, which amended the Immigration and Nationality Act (INA) to give the Attorney General the exclusive statutory authority to grant temporary protection from return to dangerous circumstances that affect a whole country or region of a country. Once the Attorney General determines that conditions in a country, or a specific region within a country, meet the criteria of the law, TPS is then designated, entitling eligible nationals to a stay of deportation and work authorization. TPS does not lead to permanent residency. Since the program s inception, the Attorney General has designated 13 foreign states and one region within a state, Kosovo province, for TPS.

To prevent fraud, INS officers review the TPS applicant s documentation, conduct database checks in the agency s Central Index System, and schedule applicants for fingerprinting before determining their *prima facie* eligibility. For the most recent designation of Nicaragua and Honduras, applicants must prove that they resided in the United States prior to December 30,1998, and have been continuously present since January 5, 1999, by providing supporting documents such as passports, employment records, rent receipts and school records. If there is any irregularity or question about the veracity of the supporting documents, the Service Center can refer the application to an INS district office for an in-person interview and, if appropriate, investigation.

When applicants appear at an Application Support Center (ASC) to be

fingerprinted, they must prove their identity by providing photo identification. If the applicant s identity is questionable, or if they have no photo identification, the Service Center can refer the applicant to a district office for an interview. On the basis of these and other fraud-prevention measures INS believes that the risk of fraud in the TPS program is minimal.

INS vigilance in anticipating fraud in the TPS and other benefit programs is based on our experience with the legalization program, which was created under the Immigration Reform and Control Act of 1986 (IRCA). IRCA aimed to solve the problem of illegal immigration through a two-pronged approach. First, a system of employer sanctions was established to reduce the power of the job Amagnet@ to attract illegal immigrants to the United States. To address the illegal population already present in the country, the law provided a means by which long-term illegal residents, as well as certain agricultural workers, could obtain lawful permanent resident status, thus becoming Alegalized.@

There is no question that the provisions of IRCA were subject to widespread abuse, especially the Special Agricultural Worker (SAW) program that granted agricultural workers who had performed 90 days of qualifying agricultural employment within a specific period temporary lawful status that automatically converted to permanent lawful status after one year. Nearly 1.3 million applications were filed under SAW status, about double the number of foreign farm workers usually employed in the United States in any given year. As of September 30, 1997, more than 1 million SAW

applicants had received permanent resident status. The difference represents cases that were denied or remain pending.

Much of the fraud that occurred under IRCA is attributable to statutory limitations the law placed on INS, restrictions that the TPS program doesn t impose on us. To establish eligibility for SAW status, IRCA allowed applicants to merely file an affidavit if no other documents were available. The confidentiality restrictions of law also prevented INS from pursuing cases of possible fraud detected during the application process. The agency was further thwarted by the courts, which ruled that INS could not deny an application simply because the supporting documentation was from a claimed employer suspected or convicted of fraud.

There are two critical distinctions between TPS and the legalization and SAW program that make TPS fraud less likely. First, IRCA offered the possibility of permanent residency, a much more valuable benefit than the temporary work authorization provided by TPS, and as such making it more likely someone might engage in fraud to obtain it. Second, and perhaps most important, by applying for TPS, many applicants identify themselves to INS as being illegal, so once the TPS period expires they may not be eligible for other immigration benefits and they could be targeted for removal. Once TPS is terminated all applicants revert to their previous immigration status.

Both NACARA and HRIFA offer permanent residence as a benefit, which is more

attractive than the temporary work authorization provided to TPS beneficiaries. INS has prepared special guidelines for the adjudication of applications under these two statutes that are aimed at deterring and detecting fraud. Any NACARA or HRIFA case where there is a discrepancy in the documentation, or a question as to the nationality of the applicant, is referred to a local INS office and the applicant is called in for an interview. In addition, INS is providing special training to its personnel so that they understand fully the statutes, regulations, and field guidance.

Temporary Protected Status

In administering the TPS program, the Immigration and Naturalization Service (INS) seeks to provide temporary humanitarian relief as directed by the statute while remaining sensitive to concerns regarding fraud. INS recognizes that TPS is an exceptional action on the part of the U.S. government and is careful to make judicious recommendations to the Attorney General for the exercise of TPS authority. I will address the INS procedures both generally and in the particular context of Honduras and Nicaragua. These are the most recent TPS designations. Since the beginning of the program, the Attorney General has designated thirteen foreign states and one region of a state, Kosovo province, for TPS. Ten of the fourteen designations are currently in effect. The INS has adjudicated over 220,000 applications for TPS. Since the expiration of the El Salvadoran designation which accounts for approximately 187,000 applications, INS has received slightly more than 30,000 applications for TPS, not including recent applications from Honduras and Nicaragua.

Country Designation

The Immigration Act of 1990 contained provisions that created section 244 of the Immigration and Nationality Act (Act), Temporary Protected Status (TPS). Section 244 of the Act provides the statutory authority for the Attorney General to allow individuals to remain in this country because of their nationality or the particular region they come from in a country.

The statute requires the Attorney General to make specific findings regarding conditions in the particular country or region before any designation can be made. To make informed decisions about which countries should be designated and when such designations should expire or be extended, INS confers regularly with the Department of State and other appropriate government agencies about conditions in specific countries. In the course of considering specific countries, INS evaluates TPS recommendations made by other branches of the government, members of the public and non-governmental organizations. Despite the sometimes large number of countries discussed, the INS forwards few recommendations to the Attorney General because of the specific findings required to provide this extraordinary relief. Once INS determines that a country meets the criteria, we forward our recommendation to the Attorney General for a decision.

When a designation is made, the Attorney General must also determine the length of the designation, which can last from a minimum of six months to a maximum of

eighteen months. Most designations have been made for a period of 12 months. A designation may be extended by the Attorney General, after a review of country conditions.

Who Is Eligible for TPS?

Nationals of designated states and persons who have no nationality and last habitually resided in the designated state are eligible for TPS provided they meet certain basic statutory criteria. Proof of one's nationality is absolutely necessary in determining eligibility. The applicant must demonstrate that he or she has been continuously physically present in the United States since the effective date of the designation and has continuously resided in the United States since the date that the Attorney makes a TPS designation. Next, the individual must be admissible as an immigrant, although several grounds of inadmissibility may be waived. The criminal grounds of inadmissibility and those grounds relating to national security may not be waived. Finally, the applicant must apply for TPS during the initial registration period. If the designation is extended and an individual was present in a valid immigration status at the time of the initial designation, that individual can apply during the extension as part of late initial registration. The Attorney General can set out the parameters for the registration period in the announcement of the designation.

Certain individuals are not eligible for TPS. A person convicted of one felony or two or more misdemeanors in the United States is not eligible for TPS. Individuals

barred from asylum are also barred from TPS.

To remain eligible for TPS, applicants must maintain continuous physical presence and must register annually with the INS. The Attorney General must withdraw TPS if it is determined that the beneficiary was not eligible for the benefit when he applied, has failed to maintain continuous physical presence in the U.S., or has failed to register annually with the Service in cases of an extension of TPS or designations longer than one year.

TPS Benefits for Non-Criminal Aliens

TPS is a temporary form of relief that does not lead to permanent residence. In other words, TPS does not prevent an individual from becoming a permanent resident, but it does not provide a basis for adjustment. Applicants granted TPS receive a stay of removal and employment authorization. Detained applicants granted TPS are released from INS detention.

The statute further directs INS to provide temporary treatment benefits to applicants who demonstrate *prima facie* eligibility for TPS. Temporary benefits include the stay of removal and employment authorization. Under the regulations, the INS must make a determination on an individual's *prima facie* eligibility based on a complete application. A complete application requires evidence of the applicant's nationality, evidence of their residence and presence in the United States, completed forms and fees

or fee waivers and their appearance for fingerprints.

Designation of Honduras and Nicaragua

INS receives TPS applications at its district offices for all TPS designations except for Nicaragua and Honduras. After determining prima facie eligibility for TPS, INS officers adjudicate the application for employment authorization. If the applicant is eligible, both applications are forwarded to the Nebraska Service Center (NSC). If the applicant is not eligible because he or she is not a national of a designated state, has been convicted of a felony or two misdemeanors, or does not have documentation to support the required length of presence or residence in the U.S., the district adjudicator denies the application. The district adjudicator conducts an interview, and when necessary, will confront an applicant with any questions or discrepancies. In instances where a pattern of fraud is suspected, the district adjudicator can refer the matter to Investigations.

In the announcement of the designations of Nicaragua and Honduras, the Attorney General estimated that more than 100,000 people present in the United States could apply for TPS. Due to the potentially large number of Honduran and Nicaraguan applicants, the Service decided to consolidate initial application processing at our four service centers..

Processing Applications at the Service Centers

Service procedures for determining an applicant's *prima facie* eligibility emphasize security. Officers at the service centers will review the applicant's documentation, conduct database checks in the INS Central Index System (CIS), and confirm that the applicant has been fingerprinted before determining the applicant's *prima facie* eligibility. If there is any irregularity or question about the veracity of the documents submitted with an application, the service center refers the application to an INS district office for an interview and if appropriate, an investigation.

Then INS officer must consider various criteria before determining *prima facie* eligibility. The INS officer evaluates the authenticity of the applicant's identity and nationality documentation. The INS has supplied the adjudicators with samples of valid identity documents from Nicaragua and Honduras. The officer next must determine from a review of supporting documentation whether the applicant has continuously resided in the United States since December 30, 1998 and has been continuously present since January 5, 1999. Supporting documentation include passport stamps, I-94 cards indicating entry, employment records, rent receipts, school records, medical records and other miscellaneous evidence. The officer must then determine the applicant's admissibility as an immigrant. This determination is based on the answers to a series of questions contained on the application for TPS, Form I-821, and a check of the CIS. The CIS database contains information such as nationality, alien number, and manner of entry on individuals previously encountered by INS. The CIS check can verify several of the applicant's responses as well as report on the applicant's prior immigration status.

Fingerprint Checks

The Service relies upon two security measures within the fingerprinting procedures to insure against fraud: identity verification and background check. After the Service receives a TPS application, the applicant is scheduled for fingerprinting. The Service does not consider an application to be complete until the applicant's fingerprints are taken. This means that an applicant cannot be granted temporary benefits until and unless they appear at an application support center (ASC) to provide fingerprints. At the ASC, the applicant must show their fingerprinting notice and a photo identification to verify their identity. If the applicant's identity is questionable or there is no identification, the case will be referred to the district office for an interview.

As with other benefit applications, the Service forwards the applicant's fingerprints to the FBI for criminal background checks. A final determination on an applicant's eligibility for TPS will be made only after the results from the FBI are reviewed. If no criminal record is discovered and the applicant is otherwise eligible, TPS will be granted.

When the Designation Is Terminated

Upon termination of the program, the TPS beneficiary reverts to his or her previous immigration status. If the alien is without status, removal priorities determine if the Service targets him or her for immediate removal.

Fraud Deterrence Efforts

INS has taken extra measures to prevent such in the designations of Nicaragua and Honduras. The Attorney General first limited the registration period to six months. Limiting the registration period will discourage persons who were not in the U.S. at the time of the designation from coming to this country throughout the designation period and registering for TPS and will compress the period in which fraud will be an issue. In all previous designations, the registration period has lasted for the entire designation period. Even in those designations with longer registration periods, INS has not encountered high levels of fraud.

Certain steps have been taken within the affected countries. Cables were sent to both countries by the Department of State at the time of the designations with warnings that those not present in the United States at that point would not be eligible for relief. In a press conference in Central America on January 29, 1998, Commissioner Meissner also warned individuals not already in the United States not to risk the journey north because they would not qualify for TPS.

Requiring the applicant to appear for fingerprints and verifying their identity at an ASC is a deterrent for those submitting fraudulent applications. The applicant will have to produce photo identification and will have to sign the appointment notice. If the service center adjudicator suspects fraud, he or she may request that the database be searched for duplicate names, addresses, preparers, or zip codes. If ASC personnel questions the identity documents produced at the time of fingerprinting they will inform the service center. The service center can refer the applicant for an interview in the district. As I mentioned earlier, the Service has provided the adjudicators with examples of valid nationality documents from both Honduras and Nicaragua. INS is confident that these measures will be effective to combat fraud.

As demonstrated, the application processing system set up by the Service contains several internal security checks designed to discourage and combat fraud. In addition to these, the Service also combats fraud by anticipating the fraud issues of specific designations. Often the most useful fraud prevention can only be discovered as applications are processed and trends become evident. For example, after the designation of Bosnia-Herzegovina, the Service found it difficult to determine if applicants with Yugoslavian passports were from Bosnia-Herzegovina. To address this, the Service issued memoranda describing various Yugoslavian passports and deciphering the various codes found on them. The Service also issued a map of Bosnia-Herzegovina as well as a list of towns. This strategy proved effective, and for the designation of Kosovo, the Service distributed maps of Kosovo and information on passports from the

Republic of Serbia and the Republic of Montenegro. Providing support to officers as they determine the veracity of the documents before them is one of the most important ways of preventing fraud for any benefit. For TPS, this support is essential.

Concluding Remarks on TPS

While providing the extraordinary, yet temporary TPS relief, INS is committed to deterring and preventing fraud. Approximately 1.3 percent of TPS applications since 1992 have been denied for fraud. Further, as explained above, we have taken many steps to discourage and prevent fraudulent TPS claims. On the basis of these efforts, INS believes that the integrity of the TPS program is firmly intact.

Brief Background on the Legalization Program

More than three million aliens filed applications for legalization under the provisions of the Immigration Reform and Control Act of 1986. The statute was drafted both to encourage undocumented aliens to present themselves to the INS for legalization and to address the migrant worker's lack of documents that could be used in support of an application. These and other factors led to a high degree of fraud in the program. INS was committed then, as it is, now to fighting application fraud, but a variety of factors made it difficult to attack fraud at the level of the individual applicant. INS anti-fraud efforts concentrated on filers of false affidavits and false document vendors. This category of fraud was most prevalent both in the underlying legalization program and in applications for class membership in the legalization litigation.

The legalization program was created under the Immigration Reform and Control Act of 1986 (IRCA). IRCA was passed in a legislative environment in which sweeping changes were being made to the Immigration and Nationality Act. In addition to IRCA, the last days of the 99th Congress also saw the passage of the Immigration Marriage Fraud Amendments of 1986, as well as the Immigration and Naturalization Act Amendments of 1986.

IRCA was intended to solve the problem of illegal immigration through a two-pronged approach: The first prong created a system of employer sanctions, intending to remove the job "magnet" that attracts illegal immigrants. To address the illegal

population already present in the United States, the second prong provided a means by which long-term illegal residents, in addition to certain agricultural workers, could obtain lawful permanent resident status, thus becoming "legalized."

The legalization provisions of the IRCA provided for adjustment of the status of aliens who had resided in the United States continuously in unlawful status since January 1, 1982. Upon satisfactory proof of such continued residence, an alien was granted temporary resident status, followed by a grant of permanent resident status after eighteen months. These provisions are referred to as "245A," for the section of the Immigration and Nationality Act containing the provisions, or more generally as "legalization."

In addition to section 245A legalization, agricultural workers who could demonstrate that they performed qualifying agricultural work in the United States for at least ninety days during a designated period were granted temporary lawful resident status which was automatically converted to lawful permanent status after one year. This program was known as the Special Agricultural Worker program (SAW).

Number and Characteristics of Applications

INS statistics indicate that 1,763,434 aliens applied for legalization under the general provisions of section 245A. Of that number, 1,660,157 were approved for temporary resident status, and 1,593,046 aliens ultimately acquired permanent residence through the program. INS statistics do not track the reasons for the denial, so it is impossible to present an accurate count of how many of the denials were based on application fraud.

Under the SAW programs, 1,277,514 aliens applied for legalization. As of August 15, 1992, 1,076,560 aliens received temporary residence. As of September 30, 1997, 1,091,846 had received permanent resident status. As in the case of 245A legalization applications, INS statistics do not track the reasons that an application was denied. You will notice that these numbers reflect a larger number of permanent residents through the SAW program than temporary residents. The Legalization Application Processing System (LAPS) database was set up to track and process SAW and legalization applications. This discrete database was established both because of the temporary nature of the legalization program and because of the confidentiality provisions of the IRCA. Because the legalization/SAW program was reaching its conclusion, the LAPS system was closed out in August 1992. Because of appeals of revocations and denials, individuals continued to receive permanent residence after the LAPS close-out. It is this fact that accounts for the discrepancy.

Fraud During the Legalization and SAW Programs

As I stated earlier, the rate of suspected fraud in the SAW cases was far greater than in the 245A legalization program. This was generally because of the easier standards of proof required to establish eligibility for SAW status. Whereas section 245A legalization applicants had to provide documentary proof of continuous unlawful residence from January 1, 1982 to the date of filing the application, SAW applicants were allowed to meet their burden by filing affidavits if no other documents were available. This more lenient documentary requirement was an acknowledgement by the Congress of the transitory nature of migrant agricultural employment and its effect on the farm worker's ability to keep and produce documentary evidence relating to eligibility for SAW status.

The great attraction for SAW fraud was permanent residence, which allowed the successful SAW applicant to in turn petition for additional relatives. Employment authorization, which the INS was required by law to provide upon the presentation of a nonfrivolous application, also encouraged many aliens to file applications. Compounding the problem was the fact that the SAW statute did not allow a finding that an application was frivolous until the evidence of agricultural work was disproved by the INS. Since much of the evidence for agricultural work was in the form of affidavits, disproving the application was a difficult proposition.

Anti-Fraud Enforcement Efforts

Because of the importance of the affidavit in the SAW application process, the INS focused its enforcement efforts on addressing the creation and sale of false affidavits. By far the most prevalent fraud in the SAW program was committed by farm labor contractors or farm owners who sold their affidavits to aliens.

As part of the implementation of the legalization and SAW programs, the INS created Document Analysis Units. A unit was created at each of the INS' four Regional Processing Facilities. These units analyzed and developed intelligence regarding persons suspected of committing legalization and SAW fraud, and developed profiles of individual violators and document packages. By the second quarter of fiscal year 1990, over 920 arrests for SAW fraud had been made, yielding 822 indictments. These arrests led to the conviction of 513 document vendors and SAW fraud arrangers. In addition, this intelligence was used in evaluating the applications of aliens who claimed to have worked for individuals who were known document vendors.

INS efforts to combat fraud were affected by two external factors: the confidentiality provisions of IRCA and judicial decisions regarding the use of intelligence regarding fraud. One of IRCA's hallmarks was its strict confidentiality provisions. These provisions were meant to ensure that "illegal" aliens were not discouraged from filing applications for fear of INS enforcement actions against them. Thus, no employee of the

Department of Justice was permitted to use any information from a legalization application for any purpose other than to make a determination on the application. Also, no employee of the Department of Justice was permitted to make any publication in which information submitted by a particular individual could be identified. These provisions were to be enforced by criminal sanctions and a $10,000 fine. Although the confidentiality provisions were intended to allow for the prosecution of fraud and for the termination of temporary resident status for fraud, the definitions of permissible activity were complex and were poorly understood by the enforcement community. This lack of understanding, combined with the fear of monetary penalties, placed a chill on prosecution of all but the most clear and egregious violations.

INS efforts to combat fraud in individual applications were also hampered by the results of litigation. Concentrating anti-fraud efforts on document or affidavit vendors was meant to provide intelligence in dealing with the fraudulent applications filed as a result of those document vendor's crimes. However, the district court in Abdullah v. INS, held that the INS could not deny applications simply because the supporting documentation was from a past employer convicted of fraud, without adequately considering the merits of the applicant's individual case. The INS thus had to go "back to square one" in the adjudication of many cases, thus wasting valuable anti-fraud intelligence.

A similar case involved an INS regulation stating that uncorroborated personal testimony by a SAW applicant would not meet the alien's burden of proof. In Haitian

Refugee Center, Inc. v. Nelson, the court held that this regulation imposed an impermissible burden of proof. Easily met standards of proof, judicial decisions, and the confidentiality provisions of the statute meant that the INS was severely limited in combating fraud against individual applicants.

The Legalization Litigation

The implementation and operation of the Legalization program were subject to early litigation. The two principal lawsuits, Catholic Social Services v. Reno ("CSS") and LULAC v. INS (later amended to "Newman v. INS"), challenged INS regulations published under the general legalization provisions of section 245A. The CSS case challenged INS regulations that disqualified aliens who left the United States without advance parole after the application period began and then returned.

The LULAC/Newman case centered on the statute's requirement that an applicant for legalization must have maintained continuous unlawful presence. The regulation in place at the time provided that an alien who left the United States and returned using a facially legitimate but invalid visa was no longer unlawfully present for purposes of legalization.

In both cases, the government argued that the lawsuits could not be maintained by aliens who had not actually applied or attempted to apply (by submitting a complete application and fee to an INS officer) before May 4, 1988. The litigation ultimately

reached the Supreme Court in 1993, where the government's position prevailed. Despite the Supreme Court's decision, the government's efforts to end the litigation were unsuccessful in the lower courts. During the ongoing litigation, thousands of aliens who had failed to apply for legalization during the one-year statutory application period were granted work authorization and stays of removal on the basis of membership in the class action lawsuits.

Fraud in Obtaining Class Membership in the Litigation

As the result of a court order, the INS was required to accept legalization applications and affidavits of class membership from aliens seeking class membership in the CSS and LULAC/Newman cases. In LULAC, class members are allowed to file skeletal applications (i.e. applications without all supporting documents) together with a nonrefundable fee. Applicants were required to establish only their identity; that they reentered the United States with a nonimmigrant visa or other travel document after January 1, 1982 and before May 4, 1988; and the reasons why an application was not filed during the one-year application period.

CSS applicants for class membership were required to file an application for legalization (Form I-687) and establish by independent evidence such as a bus ticket, airplane ticket, or declaration of a third party that they were outside of the United States due to a brief, casual and innocent absence after May 1, 1987 and before May 4, 1988. In addition, these applicants had to submit a declaration explaining the reasons why no application was filed during the application period. If these conditions were met, the INS was required to issue an Employment Authorization Document.

Many aliens claim eligibility for legalization through these lawsuits, which are commonly referred to as the "late amnesty" litigation. The approximate number of aliens affected by the litigation is as follows: In the CSS case, 180,287 aliens sought class membership. Of this total, 40,306 received class membership. In the LULAC/Newman case, 50,778 aliens sought class membership. Of this total, 25,768 received class membership.

INS together with the Department of Justice prosecuted a large number of cases involving class membership fraud. By far, the largest operation was Operation Desert Deception in Las Vegas, Nevada. The organizations and individuals targeted in that investigation filed some 22,000 applications, many of which were fraudulent, for both legalization and class membership. As of June 1996, this operation had resulted in 55 criminal convictions. Of these, the most noteworthy was the conviction of Jose Velez, the director of the Nevada chapter of LULAC and then National President of LULAC at the time the offenses leading to his conviction took place. Between March 1988 and

January 1991, Velez and his co-conspirators submitted approximately 3,000 fraudulent applications.

1996 Statutory Amendments

Section 377 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted on September 30, 1996. That section provides that courts may only hear cases brought by persons seeking relief under the IRCA if they in fact filed a timely application for legalization before May 4, 1988, or "attempted to file a complete application and application fee with an authorized legalization officer of the INS but had the application and the fee refused by that officer."

Based on the enactment of IIRIRA section 377, the United States Court of Appeals for the Ninth Circuit on January 16, 1998 instructed the district court to dismiss the CSS case and vacated all interim relief orders in the case. The LULAC/Newman case was remanded to the district court to determine if there were any persons who could meet the standard established in IIRIRA section 377.

In April 1998, following the Ninth Circuit's dismissal in CSS, plaintiffs filed a nearly identical lawsuit (CSS2) in the same district court (the U.S. District Court for the Eastern District of California). On July 2, 1998, Judge Lawrence Karlton entered a preliminary injunction ordering INS to stay the removal and continue to extend

employment authorization benefits to a nationwide class of former class members in the original CSS lawsuit. The Ninth Circuit then stayed the district court's orders granting these benefits in CSS2, so former CSS class members currently enjoy no benefits as class members. LULAC/Newman class members continue to receive employment authorization and, under the court's order, "shall not be removed" by INS. Both cases are thus currently pending in District Court, essentially to determine whether there are persons who meet the standard set forth in IIRIRA section 377

Preventing NACARA and HRIFA Fraud

NACARA and HRIFA provide various forms of immigration benefits and relief from removal to certain Central Americans, Cubans, Haitians and nationals of former Soviet bloc countries. Specifically, the laws provide that eligible Nicaraguans, Cubans and Haitians can be considered for adjustment of status to that of permanent resident.

The interim regulation provides for a discretionary waiver of interview in some NACARA adjustment cases. INS internal guidance relating to the interview waiver provision , however, restricts its use to very specific situations. The guidance requires an interview in cases in which the evidence submitted to document presence in the United States is not verifiable from INS records. We have also designed mechanisms to identify and deter fraudulent applications by persons undeserving of the special relief accorded to

eligible Nicaraguans, Cubans, and Haitians

Conclusion

The 1986 Immigration Reform and Control Act provided a generous amnesty for people who were unlawfully present in the United States. Unfortunately, the prospect of work authorization and permanent residency in the United States attracted a significant amount of opportunism and fraud. Moreover, the confidentiality provisions of the statute and evidentiary provisions that shifted the burden of proof to the government have made it difficult, and in some cases, impossible to deny or revoke status in individual cases. Accordingly, INS, the Criminal Division of the Justice Department, and the United States Attorneys have focused their investigative and prosecution efforts on fraudulent document vendors and application preparers. In the SAW program, those efforts have led to 920 arrests, 822 indictments, and 513 convictions for fraud and related criminal activity. INS and the Department of Justice have been and remain committed to identifying and prosecuting criminal fraud to the fullest extent of the law and the prudent management of available resources.

While it does not lead to lawful status in the United States, temporary protected status does afford work authorization and a temporary stay of removal. We recognize the opportunity for the abuse of this humanitarian provision of the statute. We have taken what we believe to be prudent measures to identify and address fraudulent attempts to gain the benefits of this temporary protection. Some of those measures were discussed

with you prior to the most recent designations of Nicaragua and Honduras. We found your recommendations most helpful and we would be happy to consider any further recommendations you may have in this regard.

Mr. Chairman, that concludes my testimony, I am happy to answer any questions you may have.